

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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97388

FILE: B-182850

DATE: JUL 14 1975

MATTER OF: Ronald K. Arvo - Reimbursement of real estate
broker's commission

DIGEST: Transferred employee seeks reimbursement of full amount of 7 percent real estate broker's commission he paid when he sold his residence at his old duty station. HUD schedule of closing costs for the area showed 6 percent as prevailing rate. Employee contends that he was advised that 7 percent was prevailing rate, but he submitted no evidence in support of his position. HUD schedule of closing costs creates rebuttal presumption of prevailing commission rate, and is proper rate for reimbursement when there is no evidence to contrary. Therefore, in this case reimbursement at 6 percent rate was proper.

This matter concerns a request for an advance decision submitted by an Authorized Certifying Officer of the General Services Administration (GSA) regarding the propriety of reimbursing a greater real estate broker's commission for a transferred employee.

Under the authority of GSA Travel Authorization No. OB4BT058, dated November 14, 1973, as amended January 11, 1974, Mr. Ronald K. Arvo was transferred from San Francisco, California, to Washington, D. C. Incident to this transfer Mr. Arvo sold his residence in San Pablo, Contra Costa County, California. At the time of the sale, he paid a real estate broker's commission of 7 percent, in the total amount of \$2,275, but was reimbursed for only 6 percent or \$1,950. The issue for decision here is whether the additional 1 percent commission may be reimbursed.

The agency's action in limiting the reimbursement to 6 percent was based on a review of the Department of Housing and Urban Development (HUD) Schedule of Closing Costs in the San Francisco District (which includes Contra Costa County) dated May 1973. That schedule showed a prevailing commission rate of 6 percent. Mr. Arvo contends that his conversations with the Western Contra Costa County Board of Realtors and the escrow company that handled the sale indicated that the prevailing commission rate was 7 percent, but no documentation was submitted in support of that contention. Mr. Arvo also points out that

the applicable regulations, the Federal Travel Regulations (FPMR 101-7) para. 2-6.3c (May 1973), states that the HUD listing of closing costs should be used as a guideline, not as a rigid limitation.

The authority for reimbursement of a real estate broker's commission is found in FTR para. 2-6.2a (May 1973), which provides that:

"Broker's fees and real estate commissions. A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by the broker or by brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station." (Emphasis added.)

The method to be used in determining what the prevailing commission rate is in the particular area is set out in FTR para. 2-6.3c (1973) which provides, in pertinent part, that:

"Assistance provided by local offices of the Department of Housing and Urban Development. Technical assistance in determining the reasonableness of an expense may be obtained from the local or area office of the Department of Housing and Urban Development (HUD) serving the area in which the expense occurred. The local office maintains and can furnish upon request a current FHA Form 2496, Schedule of Closing Costs, applicable to the area. This is a schedule of closing costs typically encountered in connection with the purchase and sale of single family properties in the locality. For the purpose of determining whether the expenses claimed are reasonable and may be approved for reimbursement, these closing costs should be used as guidelines and not as rigid limitations. * * *

In effect, the information provided by HUD creates a rebuttable presumption as to the prevailing commission rate. This presumption can be overcome by presenting other evidence as to the prevailing commission rate. This can be done by conducting a survey of the real estate

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brokers doing business in the area. See B-173091, June 22, 1971; B-174022, December 28, 1971; and B-174625, January 17, 1972. Without such evidence, the presumption created by the HUD schedule of closing cost must stand and is controlling.

Mr. Arvo, while contending that the HUD schedule is incorrect has presented no evidence in support of his position. Therefore, the finding that 6 percent is the proper commission rate to be used in computing Mr. Arvo's reimbursement is sustained. However, if Mr. Arvo can produce evidence, of the type described in the above-cited cases, then the agency may review its prior finding and revise it, if appropriate.

Accordingly, based upon the record before us, the reclaim voucher may not be certified for payment.

PAUL G. DEMBLING

For the Comptroller General
of the United States